



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Street address:* 629 East Main Street, Richmond, Virginia 23219

*Mailing address:* P.O. Box 1105, Richmond, Virginia 23218

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO County of Powhatan FOR Fighting Creek Wastewater Treatment Plant VPDES Permit No. VA0089206**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the County of Powhatan, regarding the Fighting Creek Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "County" means the County of Powhatan, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” means the County of Powhatan Fighting Creek Wastewater Treatment Plant located at 3900 Old Plantation Road in Powhatan, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the County.
11. “I&I” means infiltration and inflow.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
14. “Permit” means VPDES Permit No. VA0089206, which was issued under the State Water Control Law and the Regulation to the County on October 27, 2016 and which expires on September 30, 2021.
15. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
17. “PRO” means DEQ’s Piedmont Regional Office located in Glen Allen, Virginia.
18. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means the Virginia Administrative Code.
23. “VPDES” means Virginia Pollutant Discharge Elimination System.
24. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The County owns and operates the Facility. The Permit authorizes the County to discharge treated municipal wastewater from the Facility to an unnamed tributary to Fighting Creek, in strict compliance with the terms and conditions outlined in the Permit.
2. The unnamed tributary to Fighting Creek is located in the James River Basin watershed. Fighting Creek is not listed in DEQ’s 305(b) report as impaired.
3. Part I.A.1 of the Permit provides that the County shall limit and monitor discharges from Outfall 001.

4. In submitting its DMRs, as required by the Permit, the County has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for ammonia, copper, and zinc. The County exceeded its ammonia discharge limitations for the December 2016 reporting period, copper for the February, March, April, and July 2017 reporting periods, and zinc for the June and July 2017 reporting periods.
5. PRO issued WLs on February 9, 2017 for the December 2016 ammonia violation, and on April 27, 2017 for the February and March 2017 copper violations. The County responded to the February WL by letter dated February 13, 2017. In its February response, the County maintained that it was unable to determine any operational variances or changes that may account for the ammonia exceedance, but has had no subsequent ammonia discharge limit exceedances. The County responded to the April WL on May 5, 2017. In its May letter, the County indicated that it had added lime to the pre-equalization basin to increase the removal efficiency of copper.
6. On July 6, 2017, PRO issued a NOV for the December 2016 through April 2017 Permit effluent limit violations. The County responded to the NOV by letter dated July 14, 2017. In the July response letter, the County maintained that it could not determine any operational variances that may account for the December 2016 ammonia violations. The County has not had additional ammonia exceedances since December 2016. The County also maintained that it added lime to the treatment process since March 2017, which appeared to lower the copper concentration in its discharges. The County continues to add lime to its process to control and maintain the copper concentration in its effluent.
7. The County's operating logs indicate that it discharged treated wastewater from the Facility every day from December 2016 through July 2017.
8. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. The Department has issued no permits or certificates to the County for the Facility other than VPDES Permit No. VA0089206.
12. The unnamed tributary to Fighting Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

13. Based on the results of the DMRs, the Board concludes that the County has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging treated municipal wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(4) above.
14. On September 29, 2017, DEQ met with representatives of the County to discuss the draft Order. At the meeting, the County maintained that it had taken corrective action to address the violations cited in the July NOV. On October 10, 2017, the County submitted a response to the draft Order indicating that it began conducting additional sampling to respond to operational deficiencies sooner, and began a waste program requiring commercial users to conduct copper and zinc testing prior to discharging to the Facility. The purpose of the waste program is to identify source(s) of copper and zinc discharge limit exceedances and respond accordingly.
15. In order for the County to return to compliance, DEQ staff and representatives of the County have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the County, and the County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,125.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The County shall include its Federal Employer Identification Number (FEIN) \_\_\_\_\_ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in WL No W2017-02-P-1003, issued February 9, 2017; WL No. W2017-04-P-1003, issued April 27, 2017; and NOV No. W2017-07-P-0001, issued July 6, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County consents to venue in the Circuit Court of the County of Powhatan for any civil action taken to enforce the terms of this Order.
5. The County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director

verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the County. Nevertheless, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;
  - b. The County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the County.

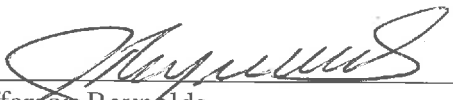
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the County and approved by the Department pursuant to this Order are incorporated into this

Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

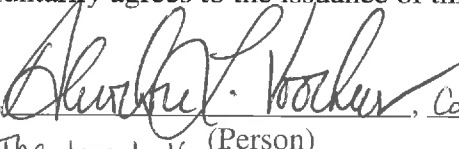
13. The undersigned representative of the County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27 day of January, 2017<sup>8</sup>.

  
\_\_\_\_\_  
Jefferson Reynolds  
Director, Division of Enforcement  
Department of Environmental Quality



The County of Powhatan voluntarily agrees to the issuance of this Order.

Date: Dec 5, 2017 By: , County Administrator  
Theodore L. Voorhees (Person) (Title)  
The County of Powhatan

Commonwealth of Virginia  
County/County of Powhatan

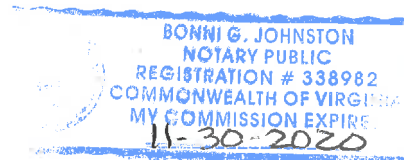
The foregoing document was signed and acknowledged before me this 5 day of December, 2017, by Theodore L. Voorhees who is County Administrator of the County of Powhatan, on behalf of the County.

  
Notary Public

338982  
Registration No.

My commission expires: 11-30-2020

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. By January 10, 2018, the County shall submit to DEQ for review and approval a corrective action plan (“CAP”) to address compliance with the Permit metal limits.
  - a. The CAP shall evaluate and address the causes of the zinc and copper effluent limit exceedances. The County shall agree to increase the frequency of metals sampling from once per month to once per week. Once the County demonstrates 12 consecutive sampling events meeting copper and zinc Permit effluent limits, the CAP will be complete and the County will not be required to do anything further regarding metals treatment and can resume once per month sampling of copper and zinc. The County began conducting weekly sampling in August 2017, which the County may count towards the 12 consecutive sampling events.
  - b. Should the County determine through the additional sampling that the Facility cannot meet Permit limits for zinc or copper, the CAP will outline additional corrective action with an implementation schedule to meet the copper and/or zinc Permit limit exceedances.
    - i. Should the County demonstrate that its industrial or commercial users are the cause of the permit limit exceedances, the County shall indicate steps that it plans to take to amend its industrial user permits to require additional sampling.
    - ii. Should the County determine that the source of the Permit limit exceedances is not its industrial or commercial users, then the County shall investigate causes of the exceedances internally and indicate steps that it plans to take to address compliance deficiencies.
  - c. Upon approval, the CAP and schedule shall become a part of and enforceable under the terms of this Order.
  - d. Implementation of the CAP shall be completed as expeditiously as possible and in no event later than 90 days after DEQ approval of the CAP.
  - e. The County shall provide to DEQ monthly progress reports by the 10<sup>th</sup> day of the month after monitoring takes place.
  - f. The County shall submit a final report documenting completion of the CAP and containing the results of the above referenced evaluation, to DEQ by no later than 30 days following completion of the CAP.

2. Unless otherwise specified in this Order, the County shall submit all requirements of Appendix A of this Order to:

Jennifer Coleman  
Enforcement Specialist  
VA DEQ – Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, Virginia